

Item # _____

Prepared by: Gloria Kelly
Real Estate Services

Commissioner _____

Approved by: Lisa Kelly
County Attorney

A RESOLUTION TO GRANT A TEMPORARY CONSTRUCTION EASEMENT, 1,567 SQUARE FEET (0.04 ACRES) IN SIZE, ACROSS COUNTY OWNED REAL PROPERTY LOCATED AT 3335 OLD GETWELL ROAD, KNOWN AS THE TALL TREES PROPERTY, TO THE BNSF RAILWAY COMPANY, FOR NOMINAL CONSIDERATION, FOR ITS USE IN CONSTRUCTING DRAINAGE IMPROVEMENTS WITHIN ITS ADJOINING RAILROAD RIGHT-OF-WAY.

SPONSORED BY: COMMISSIONER WYATT BUNKER

WHEREAS, The BNSF Railway Company is proposing to construct certain drainage improvements within its railroad right-of-way; and

WHEREAS, Shelby County owns certain real property immediately adjoining said BNSF railroad right-of-way, located at 3335 Old Getwell Road, known as the Tall Trees property, and further identified as Tax Parcel No. 073011 00018; and

WHEREAS, It is necessary in conjunction with the construction of said drainage improvements to grant the BNSF Railway Company a Temporary Construction Easement, 1,567 square feet (0.04 acres) in size, across a certain portion of said real property owned by Shelby County, for nominal consideration, which portion being more particularly described in the attached Temporary Construction Easement Document, which is hereby incorporated by reference.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF SHELBY COUNTY, TENNESSEE, That the aforementioned Temporary Construction Easement be and the same are hereby granted to the BNSF Railway Company, for nominal consideration, for its use in constructing drainage improvements within its adjoining railroad right-of-way; and that the Mayor be and he is authorized to execute the attached Temporary Construction Easement Document granting the same.

BE IT FURTHER RESOLVED, That said Temporary Construction Easement shall be in effect for a continuous period of time effective with the granting of said easement and

automatically terminating July 09, 2011 or on the completion date of drainage construction, whichever date occurs first.

A C Wharton, Jr., County Mayor

Date: _____

ATTEST:

Clerk of County Commission

ADOPTED _____

SUMMARY SHEET

I. Description of Item

A RESOLUTION TO GRANT A TEMPORARY CONSTRUCTION EASEMENT, 1,567 SQUARE FEET (0.04 ACRES) IN SIZE, ACROSS COUNTY OWNED REAL PROPERTY LOCATED AT 3335 OLD GETWELL ROAD, KNOWN AS THE TALL TREES PROPERTY, TO THE BNSF RAILWAY COMPANY, FOR NOMINAL CONSIDERATION, FOR ITS USE IN CONSTRUCTING DRAINAGE IMPROVEMENTS WITHIN ITS ADJOINING RAILROAD RIGHT-OF-WAY.

II. Source and Amount of Funding

No County Funds Required

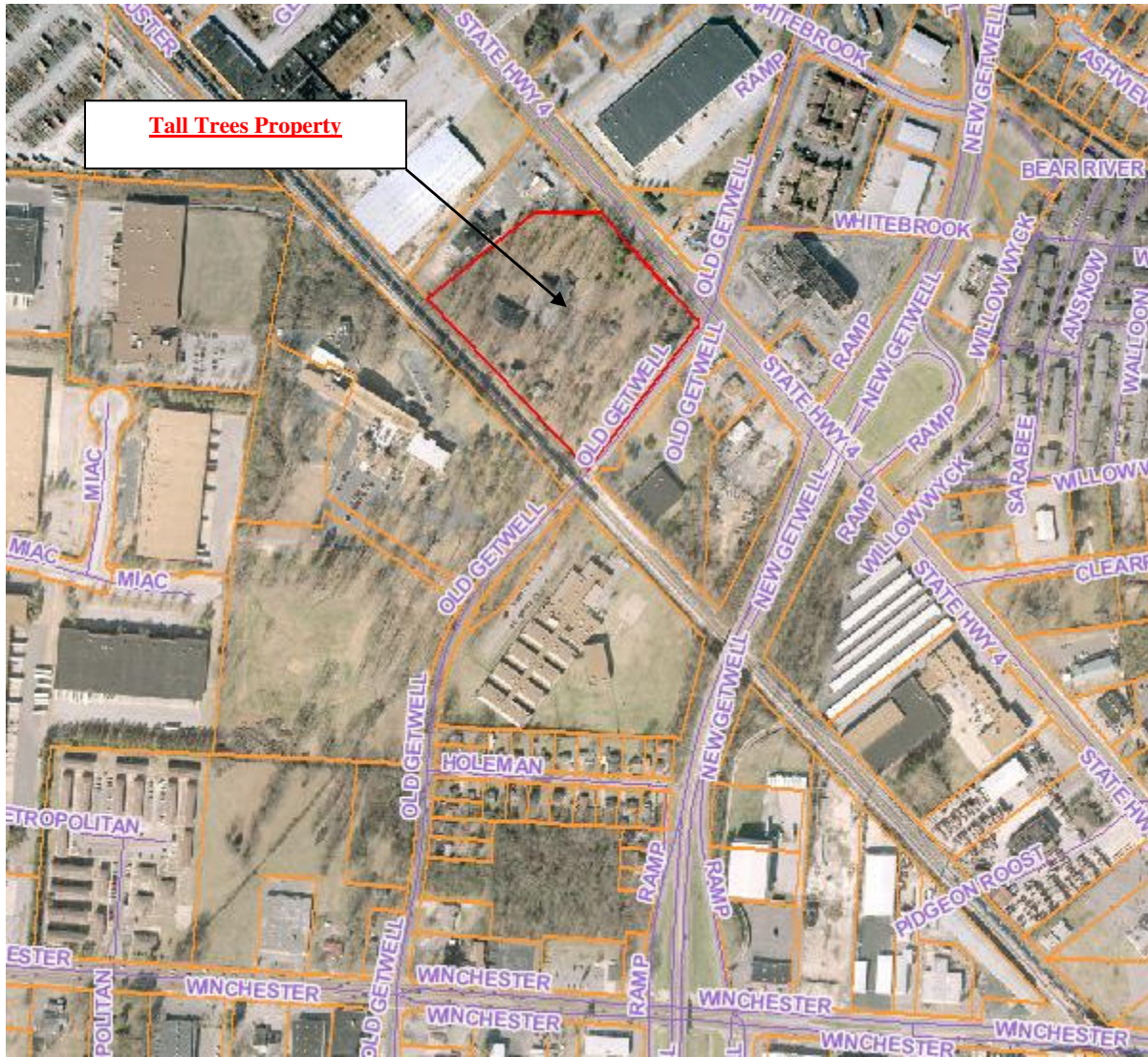
III. Contract Items

Temporary Construction Easement

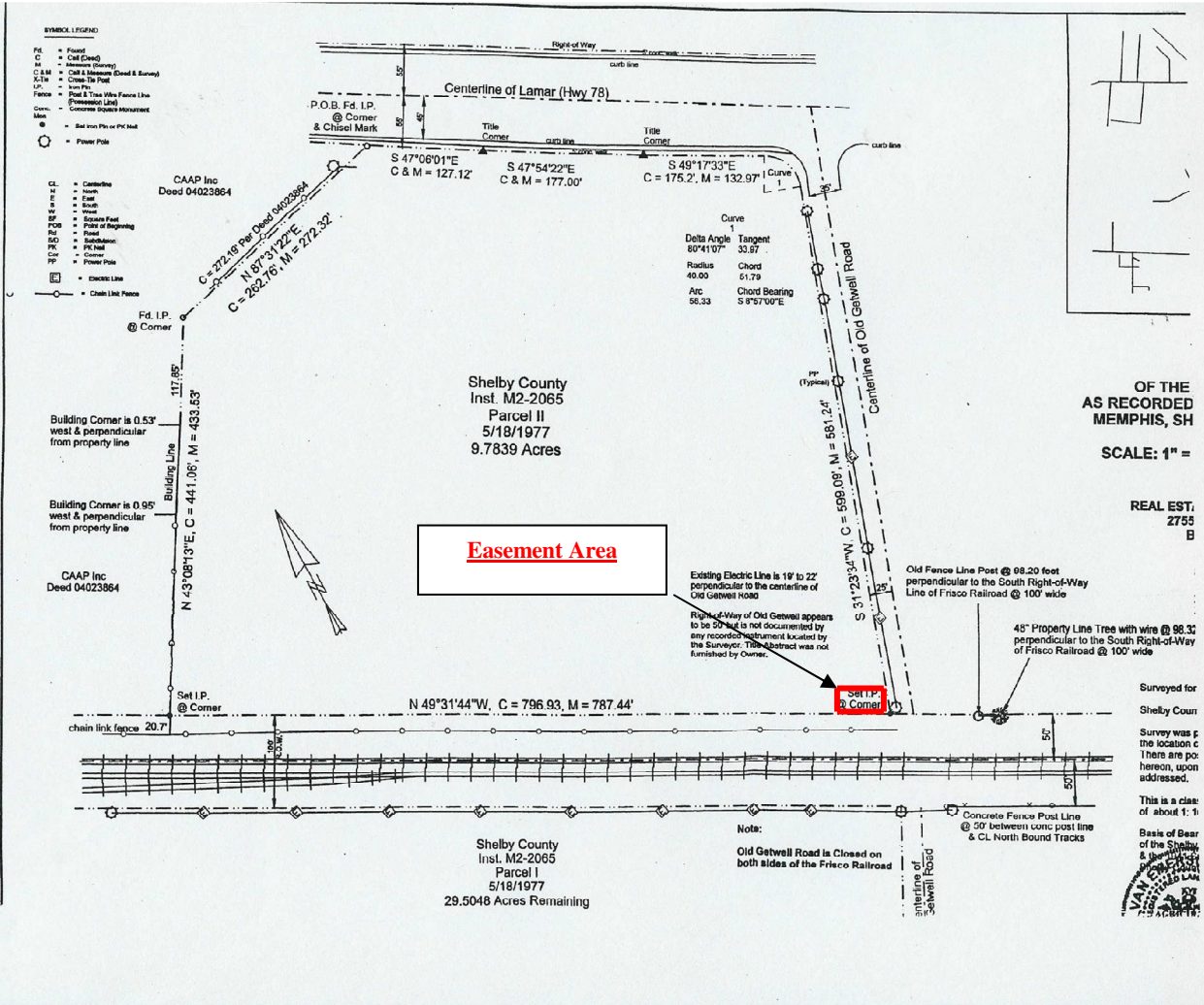
IV. Additional Information Relevant to Approval of this Item

The subject County owned Real Property, known as the Tall Trees Property, is located at 3335 Old Getwell Road, and is further identified as Tax Parcel Number 073011 00018. It is 9.78 acres in size and was acquired by the County in 1977. Between 1977 and 2004, the County utilized this property as a juvenile reformation school and housing facility. Since 2004, this property has been vacant and unoccupied awaiting redevelopment for another County use. In conjunction with the BNSF Railway Company's proposed construction of certain drainage improvement within its adjoining railroad right-of-way, the BNSF Railway Company needs Shelby County to grant it this Permanent Water Utility Easement, for nominal consideration, for its use in constructing said drainage improvements within its adjoining railroad right-of-way. This Temporary Construction Easement would be in effect for a continuous period of time effective with the granting of said easement and automatically terminating on July 09, 2011 or on the completion date of drainage construction, whichever date occurs first. Based upon the above, the Administration recommends that this grant of easement be approved.

Tall Trees Property
3335 Old Getwell Road
Tax Parcel No. 073011 00018



Tax Parcel No. 073011 00018



TEMPORARY CONSTRUCTION EASEMENT

THIS INDENTURE, made and entered into this _____ day of _____, 2008, by and between County of Shelby, a Political Subdivision of the State of Tennessee, (hereinafter referred to as "Grantor"), and **BNSF RAILWAY COMPANY**, (hereinafter referred to as "Grantee").

WITNESSETH: That for and in consideration of **TEN AND NO/100 DOLLARS (\$10.00)**, cash in hand paid and other good and valuable considerations, the receipt and sufficiency of all of which is hereby acknowledged, the Grantor has this day bargained and sold and does hereby grant and convey unto the Grantee, and unto its assigns, a Temporary Construction Easement for the purpose of permitting BNSF RAILWAY COMPANY, its contractors, employees and agents entry upon and use of the following described land situated in the City of Memphis, County of Shelby, State of Tennessee, to-wit:

This easement is 1,567 sq. ft. (0.04 acres), more or less, in size, and being part of Tax Parcel #07301100018 as described in Instrument No. M2 2065 in the Register's Office of Shelby County, Tennessee which easement is more particularly described as follows:

TEMPORARY CONSTRUCTION EASEMENT AREA

Commencing from a set half inch iron pin on the intersection of the existing Northern right of way of the BNSF railway (50.00' from centerline) and the existing Northwestern right of way of Old Getwell Road, said point also being the Point of Beginning; thence along the existing right of way of the BNSF railway North 43 degrees 10 minutes 28 seconds West for a distance of 56.03 feet to a set half inch iron pin; thence leaving said right of way North 46 degrees 49 minutes 33 seconds East for a distance of 29.14 feet to a set half inch iron pin; thence South 43 degrees 10 minutes 27 seconds East for a distance of 51.55 feet to a set half inch iron pin on the existing right of way of Old Getwell Road; thence South 38 degrees 04 minutes 27 seconds West along the existing right of way of Old Getwell Road for a distance of 29.49 feet to a set half inch iron pin on the existing BNSF railway right of way, said point also being the Point of Beginning. Said easement contains 1,567 sq. ft. (0.04 acres), More or Less.

The hereinabove described Temporary Construction Easement is hereby granted unto the Grantee and unto its assigns, for the purpose of permitting BNSF RAILWAY COMPANY, its contractors, employees and agents to use the same in conjunction with its construction to improve the drainage facilities within the BNSF right of way. Said Temporary Construction Easement shall be in effect for a continuous period of time effective with the granting of said easement and automatically terminating July 09, 2011 or on the completion date of drainage construction, whichever date occurs first.

If any action of the Grantee's employees or agents in the exercise of these rights results in damage to the real property, the Grantee will, at its option, either repair such damage or make an appropriate settlement with the Grantor. In no event shall such repair or settlement exceed the fair market value of the fee interest of the real property at the time immediately preceding such damage. The provisions of this clause are without prejudice to any rights the Grantor may have to make a claim under applicable laws for any other damages than provided therein.

TO HAVE AND TO HOLD the above described easement and right unto BNSF RAILWAY COMPANY and unto its successors and assigns, together with the right of exercising all rights reasonably and properly incident to the rights expressly granted.

And the undersigned does hereby warrant the above described easement and right unto the said Grantee and unto its successors, against the lawful claims or demands of any or all persons claiming by, through or under the undersigned.

The said Grantee agrees to have its Contractor, at said Contractor's own expense, to repair or cause to be repaired all damages to said Grantor's property outside the above described Temporary Construction Easement Area caused by the construction of said drainage improvements; to maintain the property in an orderly fashion at all times during the construction; to remove all debris from the property; and to replace the property in the same condition as that existing prior to its construction of said drainage improvements by said Grantee. The said Grantee further agrees to indemnify and hold

harmless the said Grantor against any and all damages and costs, including legal fees to persons or property, or claims for damages that arise due to said construction activity.

Furthermore, it is hereby expressly understood that the granting of the above described easements does not permit removal or filling within the said temporary construction easement area without prior approval of the County Engineer.

IN WITNESS WHEREOF, the undersigned, being duly authorized, has caused this instrument to be executed by and through its duly authorized officers the day and year first above written.

Grantor: County of Shelby, a Political Subdivision
of the State of Tennessee

Approved as to Form By:

BY: _____
Contract Administrator/
Assistant County Attorney

BY: _____
A C Wharton, Jr., County Mayor

Other County Approvals:

Grantee: BNSF RAILWAY COMPANY

BY: _____
County Engineer

BY: _____
Rebeca Ortiz
Manager-Acquisition and Development

BY: _____
Manager of Real Estate Services

BY: _____
Administrator of Land Bank

STATE OF TEXAS
COUNTY OF: TARRANT COUNTY, TEXAS

Before me, the undersigned, a Notary Public in and for the County and State aforesaid, personally appeared **Rebeca Ortiz, Manager-Acquisition and Development of BNSF Railway Company**, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself/herself the within named bargainor, a corporation of the State of Texas, and that she as such **Manager-Acquisition and Development**, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself/herself as **Manager-Acquisition and Development**.

WITNESS my hand and seal, at office this _____ day of _____, 2008.

MY COMMISSION EXPIRES:

Notary Public

STATE OF TENNESSEE
COUNTY OF SHELBY

Before me, the undersigned, a Notary Public within and for said State and County, duly commissioned and qualified, personally appeared **A C WHARTON, JR., Mayor of the County of Shelby**, with whom I am personally acquainted, and who upon oath acknowledged himself to be the **Mayor** of the County of Shelby, the within named bargainor, one of the counties of the State of Tennessee, and that he as such **Mayor** of said county, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of Shelby County by himself as such **Mayor** of said County of Shelby.

WITNESS my hand and Notarial Seal, at office in Memphis, in the County aforesaid, this ____ day of _____, 2008.

MY COMMISSION EXPIRES:

Notary Public